

Definition of Handicapped and the Presumption of Low/Moderate Income for AIDS Patients

September 17, 1992

MEMORANDUM FOR: Michael A. Smerconish, Regional Administrator- Regional Housing Commissioner, 3S

ATTENTION: John J. Kane, Director, Office of Community Planning and Development, 3C

FROM: Randall H. Erben, Acting Assistant Secretary for Community Planning and Development, C

SUBJECT: Clarification of Definition of Handicapped and the Presumption of Low/Moderate Income for AIDS Patients for the Community Development Block Grant (CDBG) Program

This is in response to your memorandum of July 30, 1992, requesting a clarification of the definition of handicapped as it relates to the presumption of low/mod benefit for AIDS patients. Your specific questions are (1) are all persons with AIDS, regardless of the stage of the illness, considered handicapped, and therefore, eligible for CDBG assistance under the presumed benefit provision at 24 CFR 570.208(a)(2)(i)(A); and (2) if not, is there a point at which a person with the AIDS virus is considered handicapped and eligible for presumed benefit?

York County, Pennsylvania, intends to provide funds to the York House Hospice to weatherize the windows and doors of the hospice. The hospice will care for four individuals, three adults and one child, who are terminally ill with AIDS-related diseases. The hospice will care for these patients during the last six weeks to two months of their lives. York County has determined that the hospice is an eligible "Public Facilities and Improvements" activity and meets the national objective requirements at 24 CFR 570.208(a)(2)(i)(A) (limited clientele-presumed benefit). The County has concluded that AIDS patients, in general, and specifically terminally ill AIDS patients are handicapped and thus qualified for the presumed benefit category. The County's determination is based on a definition of handicap provided in the 1988 Fair Housing Amendments Act. The definition provided by this Act states, in part, that physical or mental impairment includes, but is not limited to, such diseases and conditions as...Human Immunodeficiency Virus Infection...."

Notwithstanding the above definition, the CDBG program does not define the term "handicap," and grantees are given the flexibility to establish their own definition. The use of the term "handicapped persons" at 24 CFR 570.208(a)(2)(i)(A) in the CDBG regulations applies to the presumption that such persons are principally low and moderate income. This presumption permits certain CDBG activities to be carried out without documentation being required on family income. The purpose of the presumed benefit category for low- and moderate-income persons is to reduce the grantees' burden for documenting income in those cases where the probability is quite high that the majority of the persons benefiting from an activity will be low and moderate income. In the case of the handicapped category, the individuals included in the class of persons to be served

should therefore be impaired in such a manner that it is unlikely that they would be economically self-sufficient.

We are unaware of any information that would substantiate that a majority of persons having the HIV virus, or even AIDS itself, are predominately low and moderate income. However, when adults having AIDS reach a point where they are no longer able to work, they would clearly fall into the category of handicapped persons who are unlikely to be economically self-sufficient. Therefore, an activity that is designed to serve adults in the final stages of AIDS would qualify for the presumption that the beneficiaries are principally low- and moderate-income persons. In the case presented by the County, the facility is for use by persons who are so severely affected that they are not expected to live more than several weeks. To the extent that the facility is for use by adults, it would seem to meet the test of being limited to a clientele of persons who are handicapped as that term is used in §570.208(a)(2)(i)(A). We note that the County's facility is to be used by adults and children. We would not agree to extend the presumption to handicapped children, since they are dependent upon their families to meet their needs. In this case, however, the fact that the facility is expected to serve three adults and only one child at a time, would not, in our view, materially change the conclusion that the beneficiaries may be presumed to principally be low- and moderate-income persons.

If you have any further questions, please contact the Entitlement Communities Division at (202) 708-1577.

cc: Linda Marston, SC